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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/071,670  | 02/08/2002  | Philip J. Kellman    | PD-99W171           | 4015             |
| 22494   | 7590        | 11/30/2005           | EXAMINER            |                  |
| DALY, CROWLEY, MOFFORD & DURKEE, LLP<br>SUITE 301A<br>354A TURNPIKE STREET<br>CANTON, MA 02021-2714 |             |                      | WOODS, ERIC V       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2672                |                  |

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|   |                               |                                |  |
|---|-------------------------------|--------------------------------|--|
| <b>Advisory Action</b><br><b>Before the Filing of an Appeal Brief</b> | Application No.<br>10/071,670 | Applicant(s)<br>KELLMAN ET AL. |  |
|   | Examiner<br>Eric V. Woods     | Art Unit<br>2672               |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments consist primarily of arguments of the definitions of claim terms per se. Examiner submits that such definitions are improperly importing limitations from the specification into the claims as per *In re Van Geuns*. Further, Office policy is to give claims their broadest reasonable interpretation (*In re Morris*) and while this policy must be measured in light of *AWH v. Phillips*, the definitions asserted by examiner are consistent with the standard use of the terms in the art and the specification, since the examples in the specification are merely illustrative and applicant has not in any way indicated that applicant is acting as his own lexicographer in this respect as required by *Process Control v. HydReclaim*. As per that case, applicant must clearly put examiner and the public on notice (e.g. 'public notice function') if such a redefinition takes place. As such, the standards set in the *Van Geuns* decision must apply, and applicant cannot argue that the definition of the term is something other than the broader, art-accepted version. If applicant wishes to so limit the claims, that definition must be made expressly in a submitted response, with a clearly demarcated comment disclaiming other, broader definitions as required by law. Despite applicant's representative's arguments to the contrary, the evidence in the case does not support the more limited interpretation. Applicant is reminded that under current court decisions, counsel's arguments are \*not\* permitted to take the place of evidence (see *In re Schulze* and *In re Geisler*), and applicant's arguments seem mostly directed to assertions drawn from common sense, but *Geisler* specifically found that such arguments are just that -- arguments -- and are not evidence, and must be supported by appropriate affidavits. In summary, should applicant wish to dispute the definitions of altitude used by the references or patently distinguish their invention from the prior art, the definitions of the terms in the claims must be so narrowed. Further, applicant's arguments the combination of *Hancock* and *Beasley* would destroy and/or change the resultant function are simply not correct. At the very least, it would be trivially obvious to one of ordinary skill in the art who applied color to represent a differential altitude to use such a representation to indicated absolute altitude (note that this is not an admission by examiner that such references do not suggest or teach this limitation). Further, it is well known from decades of studies by psychologists that in UI design, the use of various factors, such as color, to convey more information is both useful and beneficial, and that such can reduce overall cognitive load on an operator by allowing more information to present on only one display, and to allow that information to be processed at a subconscious level. In any case, such a depiction would be obvious, and would not change the function or principle of operation of *Hancock*; rather it would be a modification of one reference to utilize the color representations of the other one. Applicant is reminded of the difference between combining references and modifying one in light of the teaching of another. Further, applicant on page 5 of Remarks is arguing contradictory definitions of differential and absolute altitude -- applicant cannot argue both sides of the coin here. As to claim 11, this is trivially well known in the art and the references do in fact point to blinking icons, and shifts in intensity. The other limitations will be discussed in the Examiner's Answer. Note that new grounds of rejection \*will\* be added to the examiner's answer if necessitated by applicant's Appeal Brief since the new rules allow for this.



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